

United States District Court
Central District of California

VERONICA J. ROWE,

Plaintiff,

v.

RANDALL D. NAIMAN ESQ – STATE
BAR NO. 81048; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 2:14-cv-02498-ODW(SHx)

**ORDER DENYING APPLICATION
FOR TEMPORARY RESTRAINING
ORDER**

I. INTRODUCTION

In June 2012, non-party Homesales, Inc. purchased Plaintiff Veronica J. Rowe's residence at a trustee's sale. On April 25, 2014, she filed this action against Defendant Randall D. Naiman, who she alleges used forged and fraudulent documents to foreclose her mortgage note. Rowe also brought this temporary-restraining-order application, ostensibly requesting that the Court enjoin Naiman's eviction-related actions against her. But after reviewing Rowe's Complaint, the Court finds that she has failed to demonstrate that she will suffer irreparable harm without an emergency injunction. The Court therefore **DENIES** her Application.

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1 II. FACTUAL BACKGROUND

2 On April 21, 2006, Rowe executed a promissory note and deed of trust in the
 3 name of non-defendant Encore Credit Corporation for the purchase of the property
 4 located at 19350 Sherman Way, Unit 216, Reseda, California 91335 (“the property”).
 5 (Compl. ¶¶ 5, 26.) Encore then sold Rowe’s loan to non-defendant Washington
 6 Mutual Bank (“WaMu”). (*Id.* ¶ 26.) Rowe alleges that WaMu subsequently
 7 transferred the note into a mortgage-backed security, which was then sold off to
 8 investors around the world. (*Id.*)

9 After WaMu failed, the Federal Deposit Insurance Company sold WaMu’s
 10 assets to JPMorgan Chase Bank, NA (“JPM”). (*Id.* ¶ 15.) But Rowe alleges that
 11 under the plain terms of that agreement, JPM did not become WaMu’s successor in
 12 interest. (*Id.* ¶ 15) Rather, Rowe asserts, since WaMu’s closure, the FDIC as receiver
 13 has controlled WaMu. (*Id.*) Accordingly, Rowe asserts JPM did not acquire WaMu’s
 14 mortgage-backed securities. (*Id.*)

15 Rowe argues that despite the fact that her loan was transferred to the FDIC
 16 incident to the WaMu Receivership—and not in fact sold to JPM—Naiman instituted
 17 eviction proceedings on behalf of JPM. (*Id.* ¶ 16–17.) She asserts that JPM was able
 18 to obtain illegal title to the property by way of Naiman’s fraudulent sworn eviction
 19 complaints and representations that the foreclosure proceedings were in compliance
 20 with California Code of Civil Procedure section 2924. (*Id.* ¶ 27.)

21 On March 25, 2009, California Reconveyance Company, acting as trustee,
 22 recorded a Notice of Default on the property and substituted JPM Specialty Mortgage,
 23 LLC as Trustee. (*Id.* ¶ 26.) On June 4, 2012, JPM Specialty Mortgage, as substituted
 24 trustee, sold the property to Homesales—a JPM company—for \$130,785.00. (*Id.*
 25 ¶ 29–31.)

26 On April 52, 2014, Rowe filed this action against Naiman, alleging claims for
 27 common-law fraud; conspiracy to defraud; mail fraud, 18 U.S.C. § 1341; wire fraud,
 28 18 U.S.C. § 1343; racketeering, 18 U.S.C. § 1952; interstate transportation of stolen

1 property 18 U.S.C. § 2314; unjust enrichment; civil conspiracy; and civil violation of
 2 the Racketeer Influenced Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962.
 3 (ECF No. 3.)

4 Rowe also included an application for a temporary restraining order in her
 5 Complaint. She requests that the Court immediately enjoin “all eviction activity”
 6 engaged in by Naiman during the pendency of this litigation.

7 III. LEGAL STANDARD

8 A court may issue a temporary restraining order upon a showing “that
 9 immediate and irreparable injury, loss, or damage will result to the movant before the
 10 adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose
 11 of such an order is solely to preserve the status quo and to prevent irreparable harm
 12 “just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods,*
 13 *Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974).

14 “The standard for issuing a temporary restraining order is identical to the
 15 standard for issuing a preliminary injunction.” *Lockheed Missile & Space Co., Inc. v.*
Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see also Stuhlbarg*
Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n.7 (9th
 16 Cir. 2001). A plaintiff seeking a preliminary injunction must establish (1) a likelihood
 17 of success on the merits; (2) a likelihood that plaintiff will suffer irreparable harm in
 18 the absence of preliminary relief; (3) that the balance of equities tips in his favor; and
 19 (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council*,
 20 555 U.S. 7, 20 (2008).

21 The Ninth Circuit employs a “sliding scale” approach to *Winter*’s four-element
 22 test. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).
 23 Under this approach, a preliminary injunction may issue if the plaintiff raises “serious
 24 questions going to the merits” and demonstrates that “the balance of hardship tips
 25 sharply towards the plaintiff’s favor,” but only so long as the plaintiff also
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1 demonstrates that irreparable harm is likely—not just possible—and that the
 2 injunction is in the public interest. *Id.* (internal quotation marks omitted).

3 Finally, “a preliminary injunction is an extraordinary remedy never awarded as
 4 of right.” *Winter*, 555 U.S. at 24. Thus, a district court should enter preliminary
 5 injunctive relief only “upon a clear showing that the plaintiff is entitled to such relief.”
 6 *Id.* at 22.

7 IV. DISCUSSION

8 Rowe has not sufficiently established a likelihood of suffering irreparable harm
 9 for the Court to issue a temporary restraining order. “Speculative injury does not
 10 constitute irreparable injury sufficient to warrant granting a preliminary injunction.”
 11 *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Thus, to
 12 secure a temporary restraining order, Rowe “must do more than merely allege
 13 imminent harm sufficient to establish standing; [she] must *demonstrate* immediate
 14 threatened injury as a prerequisite to preliminary injunctive relief.” *Id.*

15 As evidence of irreparable injury, Rowe calls the Court’s attention to the June
 16 4, 2012 foreclosure sale. Rowe takes the position that she will suffer irreparable harm
 17 without a court order enjoining Naiman’s “eviction activity.” (Compl. ¶ 124.) But
 18 Rowe alleges that the property was sold at a trustee’s sale back in June 2012—nearly
 19 two years ago—after Naiman obtained a Writ of Execution. (*Id.* ¶ 16.) She also
 20 indicates that JPM has already paid for the property. (*Id.* ¶ 30.) Thus, it appears that
 21 all foreclosure-related activity has already occurred.

22 There is therefore no immediacy to Rowe’s request. With no pending
 23 foreclosure, there is no sale to restrain or enjoin. Rowe cannot obtain a temporary
 24 restraining order simply to have the Court adjudicate her claims at break-neck speed.
 25 She must instead allow Naiman to be served, answer, and defend against her claims.
 26 Due process demands that much. The Court thus finds that Rowe has not established
 27 a likelihood of suffering irreparable harm. Since the Court has found that Rowe has
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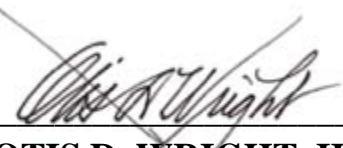
1 not established an element necessary for issuing a temporary restraining order, the
2 Court need not opine on the remaining factors.

3 **V. CONCLUSION**

4 For the reasons discussed above, the Court **DENIES** Roe's Application for a
5 Temporary Restraining Order.

6 **IT IS SO ORDERED.**

7
8 April 29, 2014

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11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**

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